

# **KENTUCKY DEPARTMENT OF EDUCATION**

## **STAFF NOTE**

### **Action/Discussion Item:**

702 KAR 6:100, Appeal procedures for school and community nutrition programs (Final)

### **Applicable Statute or Regulation:**

KRS 156.070(5), 156.160(1)(f), 13A, 13B, 7 CFR 210.18(q), 215.11, 220.13(f)(2), 225.13, 226.6(k), 42 USC 1761, 1766(e), 1772

### **History/Background:**

***Existing Policy.*** Pursuant to the statutes and regulations cited above, the Kentucky Board of Education (KBE) has promulgated 702 KAR 6:100 - a regulation setting out the process that sponsors of the School Breakfast Program, Special Milk Program, National School Lunch Program, Child and Adult Care Food Program and the Summer Food Service Program for Children utilize to appeal actions of the Kentucky Department of Education (KDE) with respect to the operation of the various programs by the sponsors. The regulation details what adverse actions may be the subject of requests for appeal, how an appeal is requested, appeal timelines, and appeal procedures.

During the April 2004 Management Evaluation of KDE's administration of the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program for Children (SFSP) by the federal cognizant agency, it was brought to our attention that the current regulation does not meet the requirements of the changes in the CACFP, particularly as enacted by the Congress in the Agricultural Risk Protection Act of 2000 and the Grain Standards and Warehouse Improvement Act of 2000 and by the administrative regulations enacted resulting there from by the Food and Nutrition Service of the United States Department of Agriculture on January 1, 2003. The Board conducted its initial review of the regulation in February.

### **Policy Issue(s):**

The proposed amendments to 702 KAR 6:100 will bring the regulation in conformance with the current federal law and regulations. No major changes have been made to 702 KAR 6:100 since its review in February 2005. However, one minor change appears on page 6, line 4, where the phrase "or ten (10) days if the matter under appeal is a suspension of participation". This was added at the request of federal officials. The other changes which the Board saw in February include:

**Page 1, line 13** – grammatical change

**Page 2, line 1** – clarification of who may appeal

**Page 2, line 3** – further clarification of who may appeal

**Page 2, line 6 and lines 11-16** – expansion of grounds for appeal

**Page 3, lines 4-5** – changes Division of School and Community Nutrition to Food and Nutrition Service (FNS)

**Page 3, line 7** – grammatical

**Page 3, lines 12-13** – clarification of who may appeal

**Page 3, line 15** – grammatical

**Page 3, lines 16-17** – update the address of the Division of School and Community Nutrition

**Page 4, lines 3-9** – language required by the federal regulation to clarify the timelines for requesting an appeal and clarifies that sponsors who appeal may review any information that formed the basis of the adverse action by KDE

**Page 4, line 10-11** – clarification of rights regarding legal representation

**Page 4, line 12** – grammatical

**Page 4, lines 20-23** – adds language to provide that if the appellant fails to appear at a scheduled hearing, the right to a personal appearance before the hearing officer is waived unless the hearing officer agrees to reschedule.

**Page 5, lines 1-9** – adds language to clarify the hearing process; allows a representative of KDE to attend the hearing; if a hearing is requested, clarifies that all parties shall be provided with advance notice

**Page 5, lines 13-16** – clarification of the timelines for submitting additional written information to the hearing officer

**Page 5, lines 22-23 – Page 6, lines 1-23 – Page 7, lines 1-3** - clarifies that the hearing officer's decision shall be based solely on the record and the relevant statutes, regulations, policies and procedures; establishes a timeline for notification of the outcome of the appeal; provides that, in the case of the summer food service program, KDE's action shall remain in effect during the appeal process; and provides exception to the immediate forgoing.

#### **Staff Recommendation and Rationale:**

Staff recommends final approval of 702 KAR 6:100. The amendments will meet the required changes by the CACFP, SFSP and other federal mandates.

#### **Impact on Getting to Proficiency:**

The amendments will keep these programs in compliance with federal law so that federal dollars continue to flow to Kentucky.

**Groups Consulted and Brief Summary of Responses:**

Local Superintendents Advisory Council (LSAC)

LSAC will provide advice via letter from that body.

**Contact Person:**

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**Deputy Commissioner**

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**Commissioner of Education**

**Date:**

April 2005